

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

VICTOR DEOLEO, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

UNITED STATES LIABILITY
INSURANCE COMPANY, a
Pennsylvania corporation,

Defendant.

Case No. 2:20-cv-02301-PD

**PLAINTIFF’S REPLY IN
SUPPORT OF MOTION TO STAY
PROCEEDINGS PENDING JPML
RULING ON MOTION TO
TRANSFER THIS AND OTHER
RELATED ACTIONS PURSUANT
TO 28 U.S.C. § 1407**

Hon. Paul S. Diamond, presiding

Plaintiff Victor Deoleo (“Plaintiff”), by and through his undersigned counsel, respectfully submits this reply in support of his motion to stay proceedings (Dkt. 13) and in response to the opposition (Dkt. 19) filed by Defendant United States Liability Insurance Company (“Defendant”). Defendant’s opposition vastly overstates the breadth and ultimate effect of the stay sought by Plaintiff and fails to establish any cognizable prejudice to Defendant should this Court exercise its discretion to await the JPML’s ruling in MDL No. 2942. The JPML will hear those motions to transfer in about three weeks, with a ruling to follow soon thereafter.

Defendant repeatedly insists that the “resolution” of a not-yet-filed motion to dismiss (“MTD”) should occur prior to the JPML ruling, but such timing is impractical and highly unlikely, and its purported necessity is unfounded. As indicated in his letter

filed on July 6, 2020 (Dkt. 18), Plaintiff is exercising his right under Federal Rule of Civil Procedure 15 to amend his complaint on or before July 14, 2020, at which time Defendant's pending MTD (Dkt. 12) will be moot. Even if Defendant were to promptly file a renewed MTD, Plaintiff's anticipated opposition would be submitted virtually contemporaneously with the JPML's hearing at the end of July. Should the JPML grant centralization, proceeding with such briefing and adjudication would be an inefficient use of the parties' and the Court's resources. Should the JPML deny centralization, the requested stay—now amounting to less than a month—ultimately would cause minimal delay to the Court's pretrial schedule and no discernible prejudice to Defendant.

Defendant's prediction of the JPML's forthcoming ruling and the fact that it does not yet have any other related actions against it also fail to present any prejudice that would result from the requested stay. While some courts have declined to stay proceedings pending the outcome of MDL No. 2942, other courts (including numerous courts within this Circuit) have granted similar stay requests or temporarily adjourned their pretrial proceedings to after the JPML ruling, even when contested by the defendants. *See, e.g., Ne&S Restaurant LLC v. Cumberland Mut. Fire Ins. Co.*, No. 1:20-cv-52289-RBK-KMW (D.N.J. June 12 & 19, 2020), Dkt. 14 (granting stay pending MDL No. 2942) and Dkt 17 (granting request to suspend MTD response deadline until stay lifted); *Colby Restaurant Group v. Utica Nat'l Ins. Group*, No. 1:20-cv-5927-RMB-KMW (D.N.J. June 10, 2020), Dkt 8 (granting stay pending MDL No. 2942); *Camp 1382 LLC v. Lancer Ins. Co.*, No. 1:20-cv-3336-RA (S.D.N.Y. May 26, 2020), Dkt. 9 (same); *Starjem*

Restaurant Corp. v. Liberty Mut. Ins., No. 1:20-cv-3672-ER (S.D.N.Y. June 4, 2020), Dkt. 10 (same); *Broadway 104, LLC v. XL Ins. Am., Inc.*, No. 1:20-cv-3813-PKC (S.D.N.Y. July 2 & 8, 2020), Dkt. 23 (adjourning initial pretrial conference to September) and Dkt. 27 (denying defendant's request to set MTD briefing schedule prior to pretrial conference).

Plaintiff submits that his stay request is reasonable, will promote judicial economy, and will not prejudice Defendant in any material way. For the foregoing reasons, Plaintiff respectfully requests that the Court stay these proceedings pending the outcome of the JPML's decision on the motions to transfer in MDL No. 2942.

Respectfully submitted,

Dated: July 9, 2020

/s/ Bradley K. King

Bradley K. King (admitted *pro hac vice*)

bking@ahdootwolfson.com

AHDOOT & WOLFSON, PC

10728 Lindbrook Drive

Los Angeles, California 90024

Tel: 310-474-9111

Fax: 310-474-8585

Benjamin F. Johns

BFJ@chimicles.com

**CHIMICLES SCHWARTZ KRINER &
DONALDSON-SMITH LLP**

One Haverford Centre

361 West Lancaster Avenue

Haverford, Pennsylvania 19041

Tel: 610-642-8500

Fax: 610-649-3633

Counsel for Plaintiff